

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Marcus Cable Associates LLC	)	
d/b/a Charter Communications	)	CSR-6949-E
	)	
Petition for Determination of	)	
Effective Competition in Burbank, CA	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 22, 2007**

**Released: June 26, 2007**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Marcus Cable Associates LLC d/b/a Charter Communications ("Charter") has filed a petition with the Commission pursuant to 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that its cable television system serving Burbank, California is subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act"), and is therefore exempt from rate regulation.<sup>1</sup> No oppositions to the petition were filed. We grant the petition finding that Charter is subject to effective competition in Burbank.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>2</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.<sup>3</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>4</sup>

**II. DISCUSSION**

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50

<sup>1</sup> 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

<sup>2</sup> 47 C.F.R. § 76.906.

<sup>3</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

<sup>4</sup> See 47 C.F.R. §§ 76.906 & 907.

percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.<sup>5</sup> Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. (“DirectTV”) and DISH Network (“Dish”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> The two DBS providers’ subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.<sup>7</sup> In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in Burbank are DBS subscribers, we conclude that the population of the franchise area at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>8</sup> We find further that Charter has demonstrated that Burbank is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in Burbank through use of data obtained through the Satellite Broadcasting and Communications Association (“SBCA”).<sup>9</sup> Charter states that it hired Media Business Corporation (“MBC”) to determine the specific zip-plus-four (“Zip+4”) zip codes located within Burbank.<sup>10</sup> Charter states that it then provided this list of Zip+4 zip codes to SBCA, which in turn determined the number of DBS subscribers in each Zip+4 within Burbank.<sup>11</sup> Charter also asserts that it is the largest MVPD in Burbank.<sup>12</sup> Based upon the aggregate DBS subscriber penetration levels, calculated using 2000 Census household data, we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, is

<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶¶ 6, 13, 72-73 (2006).

<sup>8</sup> *See* 47 C.F.R. § 76.905(g).

<sup>9</sup> Charter Petition at 5.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* and Exhibit 4. In Exhibit 4, Charter did not provide the list of the zip codes associated with the SBCA report. On February 23, 2007, the Media Bureau requested additional information from Charter regarding its SBCA submission. *See* Letter to Steven J. Horvitz, Esq. *et al.* from Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau (February 23, 2007). On March 16, 2007, Charter submitted a supplement to its petition with the list of zip codes used by SBCA in preparing its subscriber report for Charter. *See* Letter and Attachment to Marlene H. Dortch, Secretary, FCC, from Steven J. Horvitz, Esq. (March 16, 2007). Burbank did not oppose, or otherwise respond, to Charter’s supplement.

<sup>12</sup> Charter Petition at 5; *see also* Declaration of Denise Jones-Williams, Director of Regulatory Compliance for Charter.

17.42 percent in Burbank.<sup>13</sup> Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that its cable system serving Burbank is subject to competing provider effective competition.

### III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed by Marcus Cable Associates LLC d/b/a Charter Communications for a determination of effective competition in Burbank, California **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certification to regulate basic service rates granted to any local franchising authority overseeing Marcus Cable Associates LLC d/b/a Charter Communications in Burbank, California **IS REVOKED**.

7. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.<sup>14</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

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<sup>13</sup> Burbank (7,247 DBS Subscribers ÷ 41,608 Burbank households = 17.42%).

<sup>14</sup> 47 C.F.R. § 0.283.